

JOSHUA S. GOODMAN, ESQUIRE - State Bar #116576

jgoodman@gnhllp.com

Paige P. Yeh, ESQUIRE – State Bar #229197

pyeh@gnhllp.com

GOODMAN NEUMAN HAMILTON LLP

One Post Street, Suite 2100

San Francisco, California 94104

Telephone: (415) 705-0400

Facsimile: (415) 705-0411

Attorneys for Defendant

HOME DEPOT U.S.A., INC.

(erroneously sued herein as “Home Depot”)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

JERRY JENKINS,

Plaintiff,

vs.

HOME DEPOT, DOES 1 to 10,

Defendants.

Case No.

**NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1441 AND 1446(b)
BASED ON DIVERSITY OF
CITIZENSHIP UNDER 28 U.S.C. §
1332**

JURY TRIAL DEMANDED

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that Defendant Home Depot U.S.A., Inc. (hereinafter “Home Depot”), by and through its counsel, hereby removes the above-captioned action from the Superior Court of the State of California, in and for the County of Sacramento, to the United States District Court, Eastern District of California, for the reasons described below:

1. Home Depot is a named defendant in a civil action pending against it in the Sacramento County Superior Court, entitled *Jerry Jenkins v. Home Depot*, Case No. 34-2022-00314971.

2. Home Depot was served with Plaintiff Jerry Jenkins’ (“Plaintiff”) Complaint on February 10, 2022. A true and correct copy of the Summons and Complaint

1 is attached as **Exhibit A.**

2 3. Home Depot filed its Answer on March 11, 2022. A true and correct copy
3 of the filed answer is attached as **Exhibit B.**

4 4. Venue is proper in this Court because the boundaries of the United States
5 District Court for the Eastern District of California, pursuant to 28 U.S.C. § 84(b),
6 includes Sacramento County.

7 5. Following the filing of this Notice of Removal of Action, written notice of
8 this filing will be served on counsel for Plaintiff and will be filed with the Clerk of the
9 Superior Court of California for the County of Fresno, in accordance with 28 U.S.C.
10 § 1446(d).

11 JURISDICTION

12 6. This is a civil action over which this Court has original jurisdiction under
13 28 U.S.C. § 1332. This case may be removed to this Court by Home Depot pursuant to
14 the provisions of 28 U.S.C. §§ 1441(b) and 1446 in that it is a case that could have been
15 commenced in federal court based on diversity of citizenship.

16 7. Diversity jurisdiction applies for the following reasons:

17 a. Plaintiff is a resident of the State of California.

18 b. Both at the time this action was commenced and at this time, Home
19 Depot was incorporated in Delaware and has its principal place of business in Georgia.
20 Home Depot's corporate offices are located in Atlanta, Georgia, where its finance,
21 accounting, purchasing, treasury, marketing, training, human resources, information
22 systems, internal audit, and legal departments are located, making policy decisions that
23 affect the entire company. "[P]rincipal place of business' refers to the place where a
24 corporation's officers direct, control, and coordinate the corporation's activities... i.e., the
25 'nerve center.'" (*Hertz Corp. v. Friend*, 130 S.Ct. 1181, 1184 (U.S., 2010).) "For
26 purposes of removal... the citizenship of defendants sued under fictitious names shall be
27 disregarded." (28 U.S.C. §1441(a).)

28 8. Plaintiff's Statement of Damages, which was served on Home Depot on

1 March 14, 2022, seeks damages in excess of \$75,000.

2 9. Based on the foregoing, the matter is removable pursuant to 28 U.S.C.
3 §§ 1332 and 1446(b).

4 WHEREFORE, the undersigned requests that the action described above be
5 removed in its entirety to this Court for all further proceedings pursuant to 28 U.S.C.
6 § 1441, et seq.

7 **DEMAND FOR JURY TRIAL**

8 Home Depot demands a jury trial of 8 jurors pursuant to Federal Rules of Court,
9 Rule 48.

10 DATED: April 1, 2022

GOODMAN NEUMAN HAMILTON LLP

11
12 By: /s/ Paige P. Yeh
13 PAIGE P. YEH
14 Attorneys for Defendant
15 HOME DEPOT U.S.A., INC.
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EXHIBIT A

SUMMONS

Case 2:22-cv-00581-KJM-GKD Document 1 Filed 04/01/22 Page 1 of 20

(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
 HOME DEPOT

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):
 JERRY JENKINS

FOR COURT USE ONLY

(SOLO PARA USO DE LA CORTE)

FILED

Superior Court Of California,
 Sacramento

02/04/2022

mwhitaker

By _____, Deputy

Case Number:

34-2022-00314971

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
 (El nombre y dirección de la corte es):

Superior Court of California
 720 9th Street
 Sacramento, CA 95814

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
 Christopher L. Kreeger (SBN-148949) Kreeger Law Firm
 3500 Douglas Boulevard, Suite 160 (916) 782-8400
 Roseville, CA 95661

CASE NUMBER
 (Número del Caso):

DATE:
 (Fecha) FEB - 4 2022

Clerk, by _____, Deputy
 (Secretario) M. WHITAKER (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify):

under:

- ☒ CCP 416.10 (corporation)
- ☐ CCP 416.20 (defunct corporation)
- ☐ CCP 416.40 (association or partnership)
- ☐ other (specify):

- ☐ CCP 416.60 (minor)
- ☐ CCP 416.70 (conservatee)
- ☐ CCP 416.90 (authorized person)

4. ☒ by personal delivery on (date):

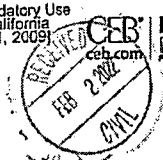
Home Depot

2/10/2022

Page 1 of 1

SUMMONS

Code of Civil Procedure §§ 412.20, 465

www.courtinfo.ca.gov

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Christopher L. Kreeger (SBN 148949) Kreeger Law Firm 3500 Douglas Boulevard, Suite 160 Roseville, CA 95661 TELEPHONE NO.: (916) 782-8400 FAX NO. (Optional): (916) 782-8401 E-MAIL ADDRESS (Optional): Chris@Kreegerlaw.com ATTORNEY FOR (Name): JERRY JENKINS		FOR COURT USE ONLY FILED Superior Court Of California, Sacramento 02/02/2022 mwhtaker By _____, Deputy Case Number: 34-2022-00314971
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento STREET ADDRESS: 720 9th Street MAILING ADDRESS: SAME CITY AND ZIP CODE: Sacramento 95814 BRANCH NAME: Gordon D. Schaber Courthouse		
PLAINTIFF: JERRY JENKINS DEFENDANT: HOME DEPOT		
<input checked="" type="checkbox"/> DOES 1 TO 10 _____ COMPLAINT-Personal Injury, Property Damage, Wrongful Death <input type="checkbox"/> AMENDED (Number): Type (check all that apply): <input type="checkbox"/> MOTOR VEHICLE <input type="checkbox"/> OTHER (specify): <input type="checkbox"/> Property Damage <input type="checkbox"/> Wrongful Death <input checked="" type="checkbox"/> Personal Injury <input type="checkbox"/> Other Damages (specify):		
Jurisdiction (check all that apply): <input type="checkbox"/> ACTION IS A LIMITED CIVIL CASE Amount demanded <input type="checkbox"/> does not exceed \$10,000 <input type="checkbox"/> exceeds \$10,000, but does not exceed \$25,000 <input checked="" type="checkbox"/> ACTION IS AN UNLIMITED CIVIL CASE (exceeds \$25,000) <input type="checkbox"/> ACTION IS RECLASSIFIED by this amended complaint <input type="checkbox"/> from limited to unlimited <input type="checkbox"/> from unlimited to limited		CASE NUMBER:

1. Plaintiff (name or names): JERRY JENKINS

alleges causes of action against defendant (name or names): HOME DEPOT

2. This pleading, including attachments and exhibits, consists of the following number of pages: FOUR

3. Each plaintiff named above is a competent adult

a. ☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California
- (2) ☐ an unincorporated entity (describe):
- (3) ☐ a public entity (describe):
- (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
- (5) ☐ other (specify):

b. ☐ except plaintiff (name):

- (1) ☐ a corporation qualified to do business in California
- (2) ☐ an unincorporated entity (describe):
- (3) ☐ a public entity (describe):
- (4) ☐ a minor ☐ an adult
 - (a) ☐ for whom a guardian or conservator of the estate or a guardian ad litem has been appointed
 - (b) ☐ other (specify):
- (5) ☐ other (specify):

☐ Information about additional plaintiffs who are not competent adults is shown in Attachment 3.



4. ☐ Plaintiff (name):
is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person

a. ☒ except defendant (name):

HOME DEPOT

(1) ☐ a business organization, form unknown

(2) ☒ a corporation

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

c. ☐ except defendant (name):

(1) ☐ a business organization, form unknown

(2) ☐ a corporation

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

b. ☐ except defendant (name):

(1) ☐ a business organization, form unknown

(2) ☐ a corporation

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

d. ☐ except defendant (name):

(1) ☐ a business organization, form unknown

(2) ☐ a corporation

(3) ☐ an unincorporated entity (describe):

(4) ☐ a public entity (describe):

(5) ☐ other (specify):

☐ Information about additional defendants who are not natural persons is contained in Attachment 5.

6. The true names of defendants sued as Does are unknown to plaintiff.

a. ☒ Doe defendants (specify Doe numbers): 1-5 were the agents or employees of other named defendants and acted within the scope of that agency or employment.

b. ☒ Doe defendants (specify Doe numbers): 6-10 are persons whose capacities are unknown to plaintiff.

7. ☐ Defendants who are joined under Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

a. ☐ at least one defendant now resides in its jurisdictional area.

b. ☐ the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.

c. ☒ injury to person or damage to personal property occurred in its jurisdictional area.

d. ☐ other (specify):

9. ☐ Plaintiff is required to comply with a claims statute, and

a. ☐ has complied with applicable claims statutes, or

b. ☐ is excused from complying because (specify):

10. The following causes of action are attached and the statements above apply to each (*each complaint must have one or more causes of action attached*):

- a. ☐ Motor Vehicle
- b. ☐ General Negligence
- c. ☐ Intentional Tort
- d. ☐ Products Liability
- e. ☒ Premises Liability
- f. ☐ Other (*specify*) :

11. Plaintiff has suffered

- a. ☐ wage loss
- b. ☐ loss of use of property
- c. ☒ hospital and medical expenses
- d. ☒ general damage
- e. ☐ property damage
- f. ☐ loss of earning capacity
- g. ☐ other damage (*specify*) :

12. ☐ The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. ☐ listed in Attachment 12.
- b. ☐ as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. Plaintiff prays for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. (1) ☒ compensatory damages
- (2) ☐ punitive damages

The amount of damages is (*in cases for personal injury or wrongful death, you must check (1)*):

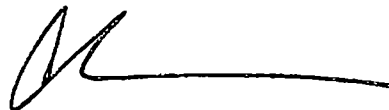
- (1) ☒ according to proof
- (2) ☐ in the amount of: \$

15. ☐ The paragraphs of this complaint alleged on information and belief are as follows (*specify paragraph numbers*):

Date: 1/20/22

CHRISTOPHER L. KREEGER

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

SHORT TITLE:

JENKINS v. HOME DEPOT

CASE NUMBER:

Case 2:22-cv-00581-KJM-CKD Document 1 Filed 04/01/22 Page 9 of 20

FIRST

CAUSE OF ACTION - Premises Liability

Page 4

(number)

ATTACHMENT TO ☒ Complaint ☐ Cross-Complaint
 (Use a separate cause of action form for each cause of action.)

Prem.L-1. Plaintiff (name): JERRY JENKINS

alleges the acts of defendants were the legal (proximate) cause of damages to plaintiff.

On (date): 06/26/2021

plaintiff was injured on the following premises in the following

fashion (description of premises and circumstances of injury):

Plaintiff was a paying guest at HOME DEPOT on Howe Avenue, in Sacramento, California, County of Sacramento. While shopping in the garden center Plaintiff slipped and fell due to water on the floor.

Prem.L-2. ☒ **Count One-Negligence** The defendants who negligently owned, maintained, managed and operated the described premises were (names):
 HOME DEPOT

☒ Does 1 to 10

Prem.L-3. ☒ **Count Two-Willful Failure to Warn** [Civil Code section 846] The defendant owners who willfully or maliciously failed to guard or warn against a dangerous condition, use, structure, or activity were (names): HOME DEPOT

☒ Does 1 to 10Plaintiff, a recreational user, was ☐ an invited guest ☒ a paying guest.

Prem.L-4. ☐ **Count Three-Dangerous Condition of Public Property** The defendants who owned public property on which a dangerous condition existed were (names):

☐ Does to

a. ☐ The defendant public entity had ☐ actual ☐ constructive notice of the existence of the dangerous condition in sufficient time prior to the injury to have corrected it.

b. ☐ The condition was created by employees of the defendant public entity.

Prem.L-5. a. ☐ **Allegations about Other Defendants** The defendants who were the agents and employees of the other defendants and acted within the scope of the agency were (names):

☐ Does to

b. ☐ The defendants who are liable to plaintiffs for other reasons and the reasons for their liability are ☐ described in attachment Prem.L-5.b ☐ as follows (names):

Case 2:22-cv-00581-KJM-GKD Document 1 Filed 04/01/22 Page 10 of 20

FOR COURT USE ONLY
FILED
Superior Court Of California,
Sacramento
02/02/2022
mwhltaker
By _____, Deputy
Case Number:
34-2022-00314971

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, San Diego County and address):
Christopher L. Kreeger (SBN- 148949)
Kreeger Law Firm
3500 Douglas Boulevard, Suite 160
Roseville, CA 95661
TELEPHONE NO.: (916) 782-8400 FAX NO. (Optional): (916) 782-8401
E-MAIL ADDRESS: Chris@Kreegerlaw.com
ATTORNEY FOR (Name): JERRY JENKINS

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Sacramento
STREET ADDRESS: 720 9th Street
MAILING ADDRESS: SAME
CITY AND ZIP CODE: Sacramento 95814
BRANCH NAME: Gordon D. Schaber Courthouse

CASE NAME: JERRY JENKINS
HOME DEPOT

CIVIL CASE COVER SHEET
☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)
Complex Case Designation
☐ Counter ☐ Joinder
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
CASE NUMBER:
JUDGE:
DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input checked="" type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify):
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 1/28/2022

CHRISTOPHER L. KREEGER

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

EXHIBIT B

FILED
Superior Court Of California,
Sacramento

03/11/2022

claurgans

By _____, Deputy

Case Number:

34-2022-00314971

1 JOSHUA S. GOODMAN, ESQUIRE - State Bar #116576
jgoodman@gnhllp.com

2 Paige P. Yeh, ESQUIRE - State Bar #229197
pyeh@gnhllp.com

3 GOODMAN NEUMAN HAMILTON LLP

4 One Post Street, Suite 2100
San Francisco, California 94104
Telephone: (415) 705-0400
5 Facsimile: (415) 705-0411

6 Attorneys for Defendant
HOME DEPOT U.S.A., INC.
7 (erroneously sued herein as "Home Depot")

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SACRAMENTO
11

12 JERRY JENKINS,

13 Plaintiff,

14 vs.

15 HOME DEPOT, DOES 1 to 10,

16 Defendants.

Case No. 34-2022-00314971

**DEFENDANT HOME DEPOT U.S.A.,
INC.'S ANSWER TO PLAINTIFF'S
COMPLAINT**

Complaint filed: February 2, 2022
Trial date: Not set

BY FAX

17
18 Defendant HOME DEPOT U.S.A., INC. (hereinafter "Defendant"), erroneously
19 sued herein as "HOME DEPOT," in answer to the unverified Complaint of Plaintiff
20 JERRY JENKINS ("Plaintiff"), denies each and every, all and singular, allegations of the
21 Complaint, and denies that Plaintiff has been injured or damaged in any of the sums
22 mentioned in the Complaint, or in any sum, or at all, as the result of any act or omission
23 of this answering Defendant.

24 **FIRST AFFIRMATIVE DEFENSE**

25 **Comparative Fault/Negligence of Plaintiff**

26 This answering Defendant alleges that Plaintiff was himself careless and negligent
27 in and about the matters alleged in the Complaint, and that this carelessness and
28 negligence on Plaintiff's own part contributed as a proximate cause to the happening of

Goodman
Neuman
Hamilton LLP
One Post Street
Suite 2100
San Francisco, CA
94104
Tel.: (415) 705-0400

1 the incident, the injuries, and loss and damage complained of, and any recovery by
2 Plaintiff should be reduced or eliminated based upon her comparative fault.

3 **SECOND AFFIRMATIVE DEFENSE**

4 **Comparative Fault/Negligence of Others**

5 As a separate and further affirmative defense, this answering Defendant alleges
6 that the sole proximate cause of the injuries and damages, if any, allegedly suffered by
7 the Plaintiff were the negligence and fault of persons or entities other than this answering
8 Defendant, for whose acts or omissions this answering Defendant is not legally or
9 otherwise responsible.

10 **THIRD AFFIRMATIVE DEFENSE**

11 **Failure to State a Cause of Action**

12 As a separate and further affirmative defense, this answering Defendant alleges
13 that the Complaint fails to state facts sufficient to constitute a cause of action against this
14 answering Defendant.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 **Lack of Personal Jurisdiction**

17 As a separate and further affirmative defense, this answering Defendant alleges
18 that as to each and every cause of action alleged in the Complaint, the Court lacks
19 personal jurisdiction over Defendant.

20 **FIFTH AFFIRMATIVE DEFENSE**

21 **Lack of Subject Matter Jurisdiction**

22 As a separate and further affirmative defense, this answering Defendant alleges
23 that as to each and every cause of action alleged in the Complaint, the Court lacks subject
24 matter jurisdiction over Defendant.

25 **SIXTH AFFIRMATIVE DEFENSE**

26 **Lack of Capacity**

27 As a separate and further affirmative defense, this answering Defendant alleges
28 that said Complaint contains a defect in the parties whereby Plaintiff or certain Plaintiffs

1 lack capacity to sue for those claims set forth therein.

2 **SEVENTH AFFIRMATIVE DEFENSE**

3 **Misjoinder of Parties**

4 As a separate and further affirmative defense, this answering Defendant alleges
5 that said Complaint arises from a misjoinder of named parties whereby Plaintiff lacks the
6 capacity to sue for those claims set forth therein. Such misjoinder will result in prejudice
7 to Defendant.

8 **EIGHTH AFFIRMATIVE DEFENSE**

9 **Failure to Join Necessary Parties**

10 As a separate and further affirmative defense, this answering Defendant alleges
11 that said Plaintiff failed to join necessary parties whereby in the interest of justice and
12 fairness the action cannot proceed in the absence of the parties that should have been
13 joined.

14 **NINTH AFFIRMATIVE DEFENSE**

15 **Real Parties in Interest**

16 As a separate and further affirmative defense, this answering Defendant alleges
17 that Plaintiff or certain Plaintiffs are not the real parties in interest, and lack standing to
18 bring the claims set forth therein.

19 **TENTH AFFIRMATIVE DEFENSE**

20 **Failure to Mitigate Damages**

21 As a separate and further affirmative defense, this answering Defendant alleges
22 that at all times and places mentioned in the Complaint, Plaintiff failed to mitigate his
23 damages. The damages claimed by Plaintiff could have been mitigated by due diligence
24 on his part or by one acting under similar circumstances. Any recovery by Plaintiff
25 should be reduced or eliminated due to his failure to mitigate his damages.

26 **ELEVENTH AFFIRMATIVE DEFENSE**

27 **Spoliation of Evidence**

28 As a separate and further affirmative defense, this answering Defendant alleges

1 that Plaintiff, either intentionally or negligently, failed to preserve the primary evidence
2 relevant to this litigation, thus failing to afford this answering Defendant an opportunity
3 to inspect such evidence, thereby severely prejudicing Defendant. Plaintiff is therefore
4 barred from introducing secondary or lesser evidence, and any recovery should be
5 diminished accordingly.

6 **TWELFTH AFFIRMATIVE DEFENSE**

7 **Doctrine of Laches**

8 As a separate and further affirmative defense, this answering Defendant alleges
9 that Plaintiff has unreasonably delayed in bringing this action to the prejudice of
10 Defendant and this action is therefore barred by reason of the doctrine of laches.

11 **THIRTEENTH AFFIRMATIVE DEFENSE**

12 **Assumption of Risk**

13 As a separate and further affirmative defense, this answering Defendant alleges
14 that Plaintiff had full knowledge of all the risks, dangerousness and hazards, if any there
15 were, and nevertheless voluntarily and with full appreciation of the amount of danger
16 involved in his actions and the magnitude of risk involved, assumed the risk of damages
17 to himself.

18 **FOURTEENTH AFFIRMATIVE DEFENSE**

19 **Causation**

20 As a separate and further affirmative defense, this answering Defendant alleges
21 that its conduct was not the cause in fact or the proximate cause of any of the losses
22 alleged by Plaintiff.

23 **FIFTEENTH AFFIRMATIVE DEFENSE**

24 **No Notice of Dangerous Condition**

25 As a separate and further affirmative defense, this answering Defendant alleges
26 that they had no notice, or inadequate notice, of any dangerous conditions that may or
27 may not have existed at the time of the losses alleged by Plaintiff, such that any
28 preventative measures could have been taken.

1 **SIXTEENTH AFFIRMATIVE DEFENSE**

2 **Statute of Limitations**

3 As a separate and further affirmative defense, this answering Defendant alleges
4 that the Complaint of Plaintiff is barred by the statute of limitations stated in Part 2, Title
5 2, Chapter 3, of the California Code of Civil Procedure, beginning with Section 335, and
6 continuing through Section 349.4 and, more particularly, but not limited to, Sections 337,
7 337.1, 337.15, 337.5, 338, 339, 340 and/or 343.

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

9 **Workers' Compensation – Exclusive Remedy**

10 As a separate and further affirmative defense, this answering Defendant alleges
11 that Plaintiff was, at all relevant times, a special employee of Defendant and acting in the
12 course and scope of that special employment, and that this action is therefore barred by
13 the exclusive remedy provisions of the Workers' Compensation Act, as contained in
14 California Labor Code sections 3600, 3601, and 3602.

15 **EIGHTEENTH AFFIRMATIVE DEFENSE**

16 **Reduction of Workers' Compensation Lien**

17 As a separate and further affirmative defense, this answering Defendant alleges that
18 at all times material herein, the Plaintiff was in the course and scope of his employment
19 and that Plaintiff and his employer were subject to the provisions of the Workers'
20 Compensation Act of the State of California; that certain sums have been paid to or on
21 behalf of Plaintiff herein under the applicable provisions of the Labor Code of the State of
22 California; that Plaintiff's employer and Plaintiff's co-employees were negligent and
23 careless and that such negligence and carelessness proximately contributed to and caused
24 the injuries of Plaintiff, if any; and that under the doctrine of *Witt v. Jackson* such
25 negligence and carelessness should reduce or eliminate any lien claim or claim in a
26 Complaint-In-Intervention which may be made for reimbursement of Workers'
27 Compensation benefits paid to or on behalf of Plaintiff.

28 ///

NINETEENTH AFFIRMATIVE DEFENSE

Apportionment

As a separate and further affirmative defense, this answering Defendant alleges that if they are found liable for any injury and damage to Plaintiff, then said liability, if any, must be limited to this answering Defendant's proportionate share of fault, if any there be, pursuant to Code of Civil Procedure Section 1431.2.

TWENTIETH AFFIRMATIVE DEFENSE

Alteration

As a separate and further affirmative defense, this answering Defendant alleges that the subject products/services/work identified in the Complaint were misused, modified, altered and/or subjected to certain treatment by Plaintiff and/or other unknown individuals or entities which substantially changed the performance, application characteristics, composition and formulation of the subject products after they left this answering Defendant's custody and control.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Compliance with Standards

As a separate and further affirmative defense, this answering Defendant alleges that the methods and procedures they employed in manufacturing, assembling, packaging, distributing, supplying and selling the products and/or services complied with all industry standards, federal, state and local regulations, and applicable states of the art in the industry, at all times mentioned herein.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Reservation of Rights

As a separate and further affirmative defense, this answering Defendant alleges that Defendant presently has insufficient knowledge or information on which to form a belief as to whether they may have additional, as yet unstated, defenses available. Defendant reserves herein the right to assert additional defenses in the event discovery indicates that they would be appropriate.

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 **Estoppel**

3 As a separate and further affirmative defense, this answering Defendant alleges that
4 Plaintiff has waived and/or is estopped from alleging the matters set forth in the
5 Complaint.

6 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

7 **Discharge of Duties**

8 As a separate and further affirmative defense, this answering Defendant alleges
9 that, prior to the commencement of this action, this answering Defendant duly performed,
10 satisfied and discharged all of its duties and obligations arising out of any and all
11 agreements, representations or contracts made by them.

12 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

13 **Trivial Defect**

14 As a separate and further affirmative defense, this answering Defendant alleges
15 that the claims asserted in the Complaint are barred by the trivial defect doctrine.

16 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

17 **Statute of Frauds**

18 As a separate and further affirmative defense, this answering Defendant alleges that
19 the Complaint and each of cause of action thereof, is barred by the Statute of Frauds.

20 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

21 **Waiver**

22 As a separate and further affirmative defense, this answering Defendant alleges that
23 the Complaint and each of cause of action thereof, is barred by Waiver.

24 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

25 **Unclean Hands**

26 As a separate and further affirmative defense, this answering Defendant alleges
27 that Plaintiff is barred from recovery by reason of his unclean hands.

28 ///

TWENTY-NINTH AFFIRMATIVE DEFENSE

Proposition 51

As a separate and further affirmative defense, this answering Defendant alleges that if this answering Defendant is found liable for any injury and damage to Plaintiff, then said liability for non-economic damages to Plaintiff must be limited to this answering Defendant's proportionate share of fault, if any there be, as defined by Cal. Civil Code Section 1431.2, et seq.

THIRTIETH AFFIRMATIVE DEFENSE

Res Judicata

As a separate and further affirmative defense, this answering Defendant alleges that Plaintiff's Complaint, and each cause of action thereof, is barred by the doctrine of Res Judicata.

THIRTY-FIRST AFFIRMATIVE DEFENSE

Collateral Estoppel

As a separate and further affirmative defense, this answering Defendant alleges that Plaintiff's Complaint, and each cause of action thereof, is barred by the doctrine of Collateral Estoppel.

WHEREFORE, Defendant prays:

1. Plaintiff takes nothing against it by his Complaint;
2. Defendant has judgment for its costs of suit; and
3. Such other and further relief as the court deems just and proper.

DATED: March 11, 2022

GOODMAN NEUMAN HAMILTON LLP

By: 

JOSHUA S. GOODMAN
PAIGE P. YEH
Attorneys for Defendant
HOME DEPOT U.S.A., INC.

PROOF OF SERVICE

CASE NAME: *Jenkins, Jerry v. Home Depot*

CASE NUMBER: 34-2022-00314971

DATE OF SERVICE: March 11, 2022

DESCRIPTION OF DOCUMENTS SERVED:

DEFENDANT HOME DEPOT U.S.A., INC.'S ANSWER TO PLAINTIFF'S COMPLAINT

SERVED ON THE FOLLOWING:

Christopher L. Kreeger
Kreeger Law Firm
3500 Douglas Blvd., Ste. 160
Roseville, CA 95661
T: (916) 782-8400 / F: (916) 782-8401
chris@kreegerlaw.com
Attorneys for Plaintiff

I am over the age of 18 years and not a party to or interested in the above-named case. I am an employee of Goodman Neuman Hamilton LLP, and my business address is One Post Street, Suite 2100, San Francisco, CA 94104. On the date stated above, I served a true copy of the document(s) described above:

BY ELECTRONIC TRANSMISSION ONLY: Pursuant to Code of Civil Procedure section 1010.6(e)(1), I caused a copy of the above document(s) to be sent to the person(s) at the e-mail address(es) listed above by electronic transmission. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on the date stated above.



Marisol Rosario